

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

YUFENG LIU

Plaintiff,

v.

MICHAEL CHERTOFF, EMILIO GONZALEZ,  
WILLIAM McNAMEE, ALBERTO GONZALEZ,  
and ROBERT S. MUELLER, III,

Defendants.

No. CV 06-1682-ST

OPINION AND ORDER

**MOSMAN, J.,**

On August 29, 2007, Magistrate Judge Stewart issued Findings and Recommendation ("F&R") (#40) in the above-captioned case recommending that defendants' Motion to Dismiss (#12) be DENIED and plaintiff's Motion for Summary Judgment (#23) be GRANTED. Objections to the F&R have been filed (#43).

Since Judge Stewart issued her F&R, Mr. Liu's application for adjustment of status was approved. Defendants, consequently, filed a Motion to Dismiss (#46), arguing Mr. Liu received the relief he requested and his claims are now moot. However, mere approval of Mr. Liu's application did not grant him all the relief he requested. Mr. Liu's complaint requests the court do the following: (1) assume jurisdiction; (2) declare the defendants' failure to act is illegal, arbitrary, capricious, and an abuse of discretion; (3) compel the defendants to act; (4) grant

attorney fees; and (5) grant other relief as just and appropriate. Compl. ¶ 24. The subsequent approval of Mr. Liu's application addresses only his third request. Therefore, I DENY defendants' Motion to Dismiss (#46).

I now address Judge Stewart's F&R. The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Stewart's recommendation, and I ADOPT the F&R (#40) as my own opinion.

IT IS SO ORDERED.

DATED this 13th day of February, 2008.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Court